

REMARKS

All the claims were rejected under 35 U.S.C. § 112, ¶ 2 for being indefinite. Applicants do not agree that the claims prior to this amendment were indefinite. However, in the interests of advancing prosecution, applicants have amended the claims (1) to eliminate the "first portion/second portion" language that the Examiner found confusing, and (2) to specify that the compositions are different in color. Applicants respectfully request that the 35 U.S.C. § 112, § 2 rejection be withdrawn.

Claims 43, 48-50, 55, and 56 were rejected under 35 U.S.C. § 102(b) as being anticipated by Shelton, U.S. Pat. 4,120,948 ("Shelton '948"). Claims 48, 49, 55, and 56 have been cancelled. Claims 43 and 50 require that the first and second compositions include 5% or less of a hydrophilic vehicle by weight. The gel phase in the product disclosed by Shelton '948 is alcohol based; see, e.g., col. 7, lines 32-46. The gel phase includes at least 10% polyhydric alcohol by weight. See i.d. As a practical matter, the gel phase includes much larger quantities of either polyhydric and/or monohydric alcohols. See the examples beginning in col. 11, all of which include over 80% alcohol by weight. Thus, the gel phase in the product disclosed by Shelton '948 does not include less than 5% of a hydrophilic vehicle as required by claims 43 and 50. As a result, the 35 U.S.C. § 102(b) rejection of claims 43 and 50 based on Shelton '928 should be withdrawn.

Claims 43, 46, 48, and 49 were rejected under 35 U.S.C. § 102(b) as anticipated by Shelton, U.S. Pat. 4,202,879 ("Shelton '879"). Claims 48 and 49 have been cancelled and claims 43 and 46 require the 5% or less hydrophilic vehicle by weight. Shelton '879 teaches the same gel phase as Shelton '928. As a result, the 35 U.S.C. § 102(b) rejection of claims 43 and 46 should be withdrawn.

Claims 1, 6-9, 12, 13, 16-18, 21-25, 28-33, 35-39, 41-44, 47-51, and 54-56 were rejected under 35 U.S.C. § 102(a) as being anticipated by Banowski et al., WO 00/67712 ("Banowski"). The Examiner indicated that this rejection would be withdrawn once the discrepancy in dates provided in the Declarations of Cheryl Galante was explained. The undersigned attorney verifies that the date in the Declaration filed February 17, 2004 ("May 31, 2000") is the correct date and requests that the rejection be withdrawn.

Claims 31, 33, 34, 36, 37, 39, 40, 42, 43, 46, 48-50, 53, 55, and 56 were rejected under 35 U.S.C. § 102(e) as being anticipated by Look et al., U.S. 2002/0041788 ("Look"). The Examiner indicated that this rejection would be withdrawn once the discrepancy in dates provided in the Declarations of Cheryl Galante was explained. The undersigned attorney verifies that the date in the Declaration filed February 17, 2004 ("May 31, 2000") is the correct date and requests that the rejection be withdrawn.

Claims 46 and 53 were rejected under 35 U.S.C. § 103(a) as being obvious over Shelton '948 in view of Shelton '879. Both claims require 5% or less by weight of a hydrophilic vehicle in both the first and second compositions. Neither Shelton reference suggests using 5% or less by weight of a hydrophilic vehicle in the gel phase. In fact, they teach using large quantities of hydrophilic vehicle. As a result, applicants request that this rejection be withdrawn.

Claims 17, 20, 22, 23, 31, 33, 34, and 36 were rejected under 35 U.S.C. § 103(a) as being obvious in view of Shelton '879. Claims 22 and 36 have been cancelled. Claims 17, 20, 23, 31, 32 and 34 require that both the first composition and the second composition comprise at least 15% of the application surface. The Examiner contends that although Shelton '879 discloses using a barrier phase that constitutes up to 10% of the application surface,

the determination of optimal size of the application surface by routine experimentation is obvious to one of ordinary skill in this art absent showing of criticality of the claimed size. There appears to be no criticality in the size of the application surface since the prior art recognizes and obtains the same results. One having ordinary skill in the art would have been motivated to do this because the reference demonstrates how to obtain the desired antiperspirant and aesthetic properties of the composition.

Applicants disagree. The purpose of the barrier phase in Shelton '879 is not aesthetic but rather to separate the solid AP phase and the gel deodorant phase. Indeed, the barrier phase is taking up space that in an optimal Shelton '879 product would be occupied by the solid AP or gel deodorant phase. As a result, a person of ordinary skill in the art would look to make this phase as small as possible. That person certainly would not try to expand the size of the barrier phase. Therefore, applicants request that the 35 U.S.C. § 103(a) rejection of claims 17, 20, 23, 31, 33, and 34 be withdrawn.

Applicant : Cheryl L. Galante et al.
Serial No. : 09/784,488
Filed : February 15, 2001
Page : 15 of 15

Attorney's Docket No.: 00216-528001 / T-680

Claims 5, 11, 20, 27, 34, 40, 46, and 53 were rejected under 35 U.S.C. § 103(a) as being obvious over Banowski in view of Shelton '879. As explained previously, Banowski does not qualify as prior art. Thus, applicants request that this rejection be withdrawn.

Applicants respectfully submit that the claims are in condition for allowance, which is respectfully requested.

Enclosed is a \$450.00 check for the Petition for Extension of Time fee. Please apply any other charges or credits to deposit account 06-1050.

Respectfully submitted,

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